

LETTER OPINION
98-L-105

August 24, 1998

Mr. Wade G. Enget
Mountrail County State's Attorney
PO Box 369
Stanley, ND 58784-0369

Dear Mr. Enget:

Thank you for your letter asking whether an election on discontinuing the county bookmobile program and supporting library services levy requires a majority vote of the qualified electors who voted at the election, or a majority vote of the qualified electors who voted on that question at the election.

In the 1998 primary election, a special measure was placed on the ballot asking whether Mountrail County's bookmobile program and supporting library services levy should be discontinued. Nine hundred and thirty-nine (939) voters voted in the election; however, only eight hundred fifty-three (853) voters voted on the specific question regarding discontinuance of the bookmobile program and supporting library services levy. You ask how many votes are necessary to discontinue the bookmobile program and supporting library services levy.

State law provides:

The governing body of any . . . county . . . upon a majority vote of the qualified electors thereof voting on the question shall establish and maintain public library service within its geographic limits Library service may be discontinued within any . . . county by any of the methods by which library services may be established

N.D.C.C. § 40-38-01 (emphasis added). Based on the above underlined language, it is my opinion that a county's library services and tax levy may be discontinued upon a majority vote of the qualified electors voting on the question at an election.

My January 3, 1997, opinion to Wells County State's Attorney Ted Seibel does not affect my opinion on this issue. See 1997 N.D. Op. Att'y Gen. L-1. The Seibel opinion related to the vote required to levy a tax for senior citizen programs. State law then in effect

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authorized a levy for senior citizen programs to be imposed "by a vote of a majority of the qualified electors." See former N.D.C.C. § 57-15-56(3).¹ The Seibel opinion recognized that, in some instances, state law requires a majority vote of the qualified electors voting on the question for a measure to be approved. See 1997 N.D. Op. Att'y Gen. L-1, L-3. No such provision was present in state law regarding the vote to levy a tax for senior citizen programs at the time the Seibel opinion was issued.

N.D.C.C. § 40-38-01 is an example of those instances in which state law requires a measure be passed upon a majority vote of the qualified electors voting on the question at an election. Thus, in this case, because 853 voters voted on the question of discontinuing the bookmobile program and supporting library services levy, at least 427 votes were necessary for the program and levy to be discontinued.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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¹ N.D.C.C. § 57-15-56(3) was amended after the Seibel opinion was issued. See 1997 Sess. Laws ch. 108 § 44. This amendment added the phrase "voting on the question" to the language from § 57-15-56(3) quoted herein.